

SENTENCE REVIEW DIVISION OF THE SUPREME COURT OF MONTANA
Montana Thirteenth Judicial District Court, County of Yellowstone

STATE OF MONTANA,)	
)	
Plaintiff,)	
)	CAUSE NO. DC-14-057
-vs-)	
)	DECISION
MARTIN JON POND, JR.,)	
)	
Defendant.)	

On February 17, 2015, the District Court sentenced the Defendant to a commitment to the Montana State Prison for a term of forty (40) years, for the offense of Mitigated Deliberate Homicide, a Felony, in violation of §45-5-103(1), MCA. It was further ordered by the Court, since the Defendant, while engaged in the commission of the offense of Mitigated Deliberate Homicide, a Felony, knowingly used a dangerous weapon, to wit: a handgun, sentenced the Defendant to a commitment to the Montana State Prison for ten (10) years, to be served concurrently with the term imposed in Mitigated Deliberate Homicide. The Court granted credit for time served from January 4, 2014 to February 17, 2015.

On February 2, 2017, the Defendant's Application for review of that sentence was heard by the Sentence Review Division of the Montana Supreme Court (hereafter "the Division").

The Defendant appeared by Vision Net from the Great Falls Regional Prison and was represented by Brent Getty of the Office of the State Public Defender. The State was represented by Yellowstone County Deputy Attorney Christopher Morris.

Before hearing the Application, the Defendant was advised that the Division has the authority not only to reduce the sentence or affirm it, but also increase it. The Defendant was further advised that there is no appeal from a decision of the Division. The Defendant acknowledged that he understood this and stated that he wished to proceed.

Rule 12, Rules of the Sentence Review Division of the Supreme Court of Montana, provides that, "The sentence imposed by the District Court is presumed correct. The sentence shall not be reduced or increased unless it is clearly inadequate or clearly excessive." (Section 46-18-904(3), MCA).

The Division finds that the reasons advanced for modification are insufficient to hold that the sentence imposed by the District Court is clearly inadequate or clearly excessive.

Therefore, it is the unanimous decision of the Division that the sentence is **AFFIRMED**.

During the hearing, the State asked the Division to modify the Defendant's sentence by making the 10-year sentence enhancement for use of a dangerous weapon consecutive to his 40-year sentence for the underlying offense. It is undisputed that Section 46-18-221(4), MCA, provides that an additional sentence for use of a dangerous weapon "must run consecutively" to the sentence provided for the offense. The record, however, reflects that the State did not object to the concurrent nature of the weapons enhancement at the sentencing hearing in the District Court. At this stage of the proceedings, the Division declines to exercise its equitable power to modify the sentence at issue where the State did not challenge the legality of the weapons enhancement at the time such additional sentence was imposed.

Done in open Court this 2nd day of February, 2017.

DATED this 8 day of March, 2017.

SENTENCE REVIEW DIVISION



Hon. Brad Newman, Chairperson



Hon. Kathy Seeley, Member



Hon. Brenda Gilbert, Member

CERTIFICATE OF MAILING

I, Georgia Lovelady, Judicial Assistant of the Sentence Review Division of the Montana Supreme Court, hereby certify that copies of the foregoing DECISION were mailed this 9th day of March, 2017, to the following:

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Georgia Lovelady, Judicial Assistant
SENTENCE REVIEW DIVISION